

LASHING, STONING AND
MUTILATING:

Islamic law is
barbaric and outdated.

Defend the case of Islam

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INTRODUCTION

ISLAM is the fastest growing religion in the world and yet it is the most misunderstood religion in the West. The popular demand for the application of *Shari'ah* the Islamic law- in various Muslim countries¹ is another great 'threat' to secularism and it has aroused suspicion, anger, jealousy and hatred among the Western ruling elite who want to dissuade people from sympathising with Islam and to vilify anything connected with Islam.²

The theme of this essay involves some common misconceptions and false charges levelled against the Islamic law in general and its penal policy in particular. Many volumes have been written by Islamic scholars to rebut and refute these allegations, but in the course of this discussion I will try my best to restrict myself to the specific points raised in the rubric of this essay.

Insha-Allah, I will tackle the problem in four parts;

- a) Issue of 'defending Islam'
- b) Nature of 'Islamic law'
- c) Issues of 'lashing, stoning and mutilating'
- d) The question of whether the Islamic law is 'barbaric and outdated'.

NOTE: You may use Acrobat Reader's 'bookmarks' tab on the left to navigate to different parts of this essay.

In the course of this essay I will discuss the role of the penal system in Islamic law and analyse some of the major punishments that are often highlighted and frowned upon by the West to show that Islamic law is all-embracing and progressive and that the Western objections of Islamic law, as outlined in the rubric of this essay, are baseless because they are neither based on objective perception of Islam in its totality nor are they constructive 'intellectual' criticisms, but rather they are based on hearsay and the West's preconceived notions and stereotype images of the so called Islamic law distorted in such a negative way so as to horrify the people and to make Islam seem ugly.

DEFEND THE CASE OF ISLAM

Before we tackle these objections and any such other objections against Islam, we must be very careful of our methodology.

Islam is the religion of Allah³ and it needs no human defences or justifications. No matter how we portray Islam, it will always remain a threat to the secular establishment. We should not be unnecessarily on the defensive and be 'apologetic' to justify to the West things that will be acceptable to them. This is especially relevant with the Islamic penal system which radically differs from all other Western and man-made legal systems- hence it attracts much hatred and jealousy.

We have seen the case of some Modernist Muslims who fell prey to the criticisms of the West and tried to explain away certain provisions of the *Shari'ah* to make it easily acceptable to Western standards, but without any success.

The issue of the punishment for theft is a good illustration; Sir Syed Ahmad Khan not only believed that "Western prisons were vastly superior to any Islamic alternative"⁴ but he also argued that imprisonment is the most appropriate punishment for theft and other *hudood* offences because at the time of the revelation of the Qur'an, "there was no prison or isolated island for the criminals"⁵. Others argued that "in a truly Islamic society the chopping of a hand would not arise at all"⁶ or the "punishment of 'cutting off' the hand is only in cases of offenders involved in habitual theft or if the crime is very serious"⁷ or the cutting off the hand "will make the disabled thief a great burden for the people"⁸. And yet others have argued that the Qur'anic order "cut off their hands" (5:38) only means that the thief's hand should be injured⁹ or it means "prevent the thief from stealing" by creating such an economic atmosphere where everyone is well off to enjoy themselves.¹⁰

"All these are", according to Ashfaq Ahmad, "mere perversions of Islamic Jurisprudence, unproved by any precedence".¹¹ Humans are fallible and their minds are limited and as believers, we must submit *wholeheartedly* to the will of Allah as He says

"O those who believe! Enter into Islam completely" (2: 208)

and He also tells us

"it may happen that you may hate a thing which is in fact good for you and it may happen that you may love a thing which is in fact bad for you" (2: 216).

So we should have trust and full confidence in the Lord of the Universe whose decrees are full of wisdom, mercy and blessings. Therefore "no apologies or excuses are needed to explain away or make acceptable to the West"¹² things that have been so clearly stated in the Qur'an and the Sunnah and understood by the whole Ummah for the last fourteen centuries.

ISLAMIC LAW

From the rubric of this essay, it seems to suggest that Islamic law is all about 'lashing, stoning and mutilating'. This is the picture of the *Shari'ah* that the West wants to portray, but it is far from the truth. Even the term Islamic law, judged by Western standards, could be a misnomer; "The *Shari'ah* is not merely a system of law, but a comprehensive code of behaviour that embraces both private and public activities"¹³ and "it has a wider application than any secular system of law since it claims to regulate all aspects of a man's life - his duties to God, to his neighbour and to himself".¹⁴

The *Shari'ah* encompasses and governs every sphere of human activity including the spiritual, moral, social, economic and political aspects of life¹⁵ and according to H.A.R. Gibb, it is "the most far-reaching and effective agent in moulding the social order and the community life of the Muslim people".¹⁶ It is the only perfect system of justice that could solve all of world's problems including the crime problem which is seriously affecting and worrying Western societies¹⁷ as it is something that "God in His (Infinite) Wisdom has ordained for the well being of all mankind".¹⁸ Islam denotes the complete submission to the will of Allah, which is only possible "if the *Shari'ah* is fully applied in its totality".¹⁹

The "*Shari'ah* is an integrated homogenous whole"²⁰ and any of its specific provisions should be looked at within the overall context and not in isolation because "any arbitrary division of the scheme is bound to harm the 'spirit' as well as the structure of the *Shari'ah*"²¹. Hence the Islamic penal system, as this essay deals with, should be "viewed with the background of the whole Islamic system of life covering the economic, social, political and educational spheres of activity"²² and not in isolation as is often portrayed and distorted by the media and the politicians.

ROLE OF PUNISHMENT IN ISLAMIC LAW

Traditionally it is said that the *Shari'ah* is divided into five main branches:

I'tiqadat (beliefs), *'ibadah* (ritual worship), *adaab* (morals and manners), *mu'amalat* (transactions and contracts) and *'uqubat* (punishments).²³

The *Shari'ah* protects and defends life, property, honour, religion and intellect.²⁴ Hence the penal system is absolutely vital in guaranteeing these fundamental 'human rights',²⁵ as it is "the defence system in any society"²⁶ which "upholds the values and preserves the institutions of that society"²⁷ otherwise "the entire fabric of society will crumble"²⁸ as "it is on the proper and most effective administration of law that a society is moulded into what it should be".²⁹ Therefore the Islamic penal system is just one of many branches of *Shari'ah* and it will be unfair for a critic, as it is done in the rubric of this essay, to single out some aspects of its penal policy in isolation to judge the merit or de-merit of the Islamic law without looking at the "context of its total scheme - its conceptual basis, primary objectives and goals and overall framework".³⁰

The concepts of crime and punishment in the *Shari'ah* were tailor made "to bring about the kind of society and moral order that the religion of Islam foresaw".³¹ In fact there are arguments to suggest that Islamic punishments are only applicable and enforceable in a just and proper Islamic state where the socio-economic and political systems are fully operating according to *Shari'ah*.³² There is a saying that "you can bend the necks but you can't change the hearts"- so punishment alone cannot ensure compliance with the law or solve the problem of crime.³³

In an Islamic state, punishment follows a long series of prohibitory and reformatory steps where all efforts are made to engender attitudes of contempt for crime and eliminate all the root 'causes' of crime and to create a healthy crime-free environment.³⁴ Even then punishment is not meted out for all breaches of the *Shari'ah* but only certain specifically defined crimes with strict conditions "because of their bearing upon...the establishment of peace and order".³⁵

It has been argued by many renowned jurists and criminologists that "it is an essential requirement for a 'viable' legal system to be inclusive of both fixed and variable elements in its penal postulates".³⁶ Islam, being cognisant of human conditions, provides for this when it divides its penal penalties in three categories.

The first and most severe type of punishments are known as the ***hudood*** (singular *haad*) meaning a thing which restrains or prevents since a punishment "prevents a man from doing crimes".³⁷ However, it is a strictly defined penalty which is mentioned in the Qur'an or the Hadith and it includes adultery, fornication, false imputation of unchastity (*qadhif*),

drunkenness, armed robbery, sedition and apostasy, though there are some disagreements on whether one or two are technically described as '*hudood*'.³⁸ Because of "the decisive nature of *haad*, its severity and its exactness and its strictness in the rules of evidence", it has "considerably limited the severest penalties".³⁹

The second category of punishment, known as *qisas* (equitable retribution)⁴⁰, is inflicted for deliberate killing or wounding of a person. Unlike *haad*, the penalty could be waived by the victim or his heir in lieu of blood-money (*diya*), but for unintentional homicide or wounding there is no retribution and only compensation is paid. The Qur'an teaches that:

"And for you in equitable retribution there is Life, O people of understanding, that you may ward off evil" (2: 179)⁴¹.

The third category of punishment is known as *ta'zeer* (discretionary punishment) and it is "a sentence or punishment whose measure is not fixed by the *Shari'ah*"⁴² neither as to the offence nor the penalty. It helps to meet varying circumstances (e.g. if a definitional element is short in a *haad* offence) and the punishment that was generally inflicted in the past was whipping, though other alternatives such as a warning, fines and imprisonment could be given, but the quantum of punishment for *ta'zeer* is generally much below that of *haad* (e.g. ten lashes).

'LASHING'

The word 'lashing' has strong negative connotations and sounds like the vicious slashing and the more appropriate synonyms would be whipping and flogging. Among the *hudood* punishments, the offences of fornication, slander and drunkenness carry the penalty of flogging and it could also be prescribed for a number of *ta'zeer* offences. As the first two are 'Sexual Offences', I shall deal with them under 'Stoning' because they are connected with adultery. Practically, for the Westerner, drunkenness is the most likely offence that invokes the penalty of flogging and so I will mention it in some detail.

The Qur'an strictly orders the believers to shun intoxicants as "it is the handiwork of Satan" (5:90) and it will 'divert' the believers from the "remembrance of Allah" (5:91) and the Hadith goes even further to condemn all acts associated with alcohol such as drinking, buying, selling, transporting and brewing. Drinking is rampant in Western societies even though "the greatest cause of 'violent' crime in the West is alcohol"⁴³ Almighty Allah, in His Perfect Wisdom, has prohibited alcohol not only for its "evil effects on the body and the society, but also for their evil moral" consequences.⁴⁴

The Islamic penal policy is not to create opportunities for crime and then to punish the culprit, but it aims at eliminating the very root cause of crime. There is a saying "prevention is the best cure" and if we can eliminate alcohol from society, then we can eliminate or at least substantially reduce the rate of crime. That is why "in true Islamic societies there is virtually no drunkenness with its associated catalogue of crimes"⁴⁵ such as homicide, physical assault, domestic violence, reckless driving, vandalism and rape. "

Islam punishes before there is the chance for a serious crime to be committed"⁴⁶ and thereby it stops public nuisance and safeguards people's lives, honour, intellect and property. Alcoholism is a widespread disease and no human solutions are apparent as a result of which even Westerners have admitted that "for recovering alcoholics, Islam is a more effective 'cure' than the Betty Ford clinic".⁴⁷

Lord Scarman, the well-known British judicial champion of civil liberties, writes that "it is important to a civilised system of justice to have humane values at all levels of its administration"⁴⁸ and Islam provides for this.

Flogging in Islamic law is "not just a savage beating inflicted capriciously according to the whims of brutal guards" but it is done "with control, in accord with justice and in the kindest possible way in the circumstances"⁴⁹ to the extent that one English writer says that "the best comparison for Islamic flogging is the caning of children at school".⁵⁰ Even the President of the International Court of Justice at the Hague in 1967 declared that "certain types of offences

call for severe chastisement, and flogging in the case of such offences cannot be regarded as cruel, inhuman or degrading".⁵¹

During the time of the Holy Prophet (saw), drunkards were generally beaten with shoes but at the time of the second *Khalifah* Umar the punishment for drinking was fixed to 40 lashes or eighty lashes for the more mischievous drunkards.⁵² People are not given the *haad* punishment for drinking alcohol in their homes in privacy⁵³, but at least two witnesses are required to bear witness to the act of drinking and it has to be proven that it was consumed by a mature person voluntarily without any compulsion. A person is only punished with flogging if all the definitional elements of the crime are proven and it is attested by reliable evidence.

Even with respect to flogging at the time of sentencing, certain conditions and restrictions are imposed; the punishment should not be inflicted by vicious executioners and it should not be carried out in severe hot or cold weather. It is also prescribed that the whip be of medium size, the flogging is done with average intensity and it should not be inflicted on the naked body nor on the head, face and private parts and the whipping should not cause any wound and it should be distributed evenly in various parts of the body and not only on the same parts.⁵⁴

Such is the humanity of punishment in Islam even when it prescribes 'deterrent' punishments for major offences such as fornication, slander and drunkenness!

'STONING'⁵⁵

This is the most severe of all the punishments that exist in Islamic law and, just like the case of treason nowadays under English law⁵⁶, it is extremely rare in practice as during the last fourteen centuries of Islamic history only "fourteen cases of stoning could hardly be numbered in all that time".⁵⁷

Considering this extreme rarity, it is totally dishonest and unfair for a critic to single out stoning in order to judge not only the Islamic penal system but also the structure of the entire Islamic law in general as it is done in the rubric (title) of this essay.

Islamic law aims to ensure the stability of society from its very base - the family - which is the 'nucleus' of society that breeds society's values and holds together the various institutions in society. "The family, is thus, the cradle of the individual and the cornerstone of society"⁵⁸

In Islam, marriage is not only encouraged but also made obligatory to ensure the continuity of the family "in the interest of the preservation of the human race and the stability of human civilisation".⁵⁹ Chastity is highly esteemed as a supreme virtue in Islamic societies, though it is not an ideal in the West where immorality is rampant and flirting has become the part and parcel of life.

In the West, the institution of marriage has significantly declined and nearly half of the marriages end up in divorce. The family has broken down resulting in much tension and the disintegration of other institutions in society and the rate of crime has steadily risen to epidemic proportion. The root 'cause' of all these is *zina* - the unlawful sexual union between a man and a woman who are not married to each other. *Zina* is the breach of the greatest 'trust' that a man and a woman can ever have and it leads to disastrous consequences such as breakdown of family ties, depression, domestic violence, child abuse, rape⁶⁰ and "the AIDS epidemic as a result of promiscuous sexual activity in direct contravention of Divine law".⁶¹ That's why John Major's "Back to Basics" campaign is geared toward restoration of family values in order to reduce the crime rate and to maintain social order.

Zina is the most deadliest of all social crimes and "Islam puts an end to all those factors that 'allure' a man to *zina* or provide occasions for it"⁶² The Qur'an condemns *zina* not with the words "*La Tazanu*" (Do not commit adultery), as in the Pentateuch "Thou shall not commit adultery", but with the words "*La Taqrabuz zina*" (Do not go near adultery)...thus blocking all possible 'paths' leading to that act".⁶³

That is why in Islamic societies, there is the segregation of the sexes and the Qur'an orders both men and women to "*lower their gaze*" (24:30-1) and for women to wear the *Hijab* so that "*they may be recognised and not molested*" (33:59) as it is better for the *purification* of the hearts of both the sexes (33:53).

To eliminate the root cause of *zina*, Islam also takes other large scale precautionary and prohibitory measures such as developing God-consciousness, repugnance to sin and the belief in accountability, in every stage of education and it also encourages "early marriage and provides aid from the Public Treasury for those who wish to get married yet cannot afford to do so".⁶⁴

Islamic societies, for this reason, will also not tolerate lures, mixed parties, pornography and the like which is likely to arouse the passion and disturb family relations because after all, according to the Qur'an,

"Man is created weak" (4:28).

Islam also very strongly condemns false imputation of *zina* on another person (*qadhf*) as the Qur'an declares:

"As for those who slander chaste women and produce not four reliable witnesses, then stripe them with eighty lashes and never accept their testimony thereafter" (24:4).

Thus slander of this kind is dealt with severely as it seriously affects and damages self-confidence and strains family relations. Islam is never prepared to accept the kind of gossip that is so frequently found in the tabloid papers and the scandal-mongers are punished severely with eighty stripes.

Despite all the lawful channels provided, if a person transgresses the limits beyond all bounds of decency to commit *zina* in 'public', then Islam provides severe chastisement to safeguard the family and to save society from corruption and destruction and the punishment acts as a strong 'deterrent' to others.

For fornication between unmarried couples the penalty is 100 lashes and for adultery between married couples the penalty is stoning to death (*rajm*).

Even then the *haad* punishment is not prescribed for the mere commission of *zina*, but other definitional elements of the crime has to be satisfied; only that kind of adultery is punishable by stoning which is committed intentionally by a free person who is both mature and sane, the accused must be committed to a marriage and has had intercourse with his lawful spouse, the

accused must have committed *zina* voluntarily without compulsion and the act of *zina* must be attested by four honest, reliable and trustworthy witnesses who must have all seen the act of penetration and all four witnesses must be 'unanimous' in every stage of the act including minute details (if statement of one witness is contradictory to the others, then all four witnesses will be given the *haad* punishment of 80 stripes for slander)⁶⁶

Such are the strict legal technicalities that have to be understood before the *haad* of stoning is carried out on adulterers and these facts are not highlighted by the West when condemning the punishments for *zina*. All the above mentioned conditions have to be met, before the *haad* is imposed which is very hard to do. Especially the question of witnesses is the most difficult aspect of all - the necessity of a minimum of four witnesses, as opposed to other *haad* offences where two are sufficient, who must be devout (the testimony of a *fāsiq*, a person who lies or breaks any of the major prohibitions of Islam is inadmissible), the unanimous description of the act of penetration and other minute details by all four witnesses and the fear of receiving the *haad* penalty for slander on the part of witnesses greatly reduce the chance of conviction for the adulterers as the required evidence is "so strong and complete as to be practically impossible to obtain".⁶⁷

That is why during the life of the prophet, "it was not possible to prove...one single case of adultery" ⁶⁸ and "during 1400 years of the Muslim era only fourteen cases of adultery have been recorded"⁶⁹ - hence "punishment by stoning has remained what it always was", harsh in principle, "but extremely rare in practice".⁷⁰

‘MUTILATING’

Mutilating means "to deprive a person of an organ of the body"⁷¹ and like 'lashing', it too has some negative connotations and I would prefer the alternative 'amputating'. In Islamic law, its application is only confined to the *hudood* punishments for armed robbery⁷² and theft⁷³, except of course that it might be applicable to the retributory punishments of *qisas*. For all practical purposes, the punishment of 'cutting off' the hand is generally invoked for the offence of theft and so I will mention it in some detail.

In Britain, most of the recorded crimes involve theft and a burglary is committed every twenty four seconds.⁷⁴ Property is something which people hold very dearly and often spend their whole lives in acquiring, and the *Shari'ah* seeks to protect the people's rightful ownership to property⁷⁵ and thereby ensure the stability of family and reduce violence, vandalism and frustration. The punishment for theft in Islamic law must be seen in the context of the 'Social Security' system of the Islamic Welfare State.⁷⁶

"Islam aims at creating a society in which none is compelled by the force of circumstances to steal".⁷⁷ Rights and duties are reciprocal in Islam and "no duty is ever imposed on man without his being granted a corresponding right".⁷⁸

In an Islamic state, "every individual is entitled to social security collected from various sources including the obligatory collection of *zakat*"⁷⁹ and "the basic needs of all citizens are adequately met"⁸⁰ because according to a saying of the prophet, *every son of Adam is entitled to food, clothing and shelter*.⁸¹ "It is only after the state discharges its own duty that it can impose the penalty on a thief,⁸² who selfishly intrudes on the rights of others despite being provided with all the basic amenities of life. Hence "if a citizen is forced by circumstances (e.g. poverty)...the society will be considered at fault and no hadd punishment will be given to the accused".⁸³ It was in this light that the second *Khalifah* Umar, who was well known for his "strict rigidity in enforcing the rules of *Shari'ah*"⁸⁴, waived the cutting off the hand for theft during a period of famine.⁸⁵

Having looked at the socio-economic context of the amputation of hand for theft, it is also necessary to look at the 'legal' technicalities. A strong 'deterrent' punishment for theft is justified because "it is fear of consequences as world-wide human experience proves, that keeps in check the very natural tendency, almost inherent in human nature, to stealing and thieving".⁸⁶ The punishment may appear to be harsh "to some hypersensitive Western reader"⁸⁷ who are swayed by false sentiments, but "the hand is cut off for the preservation of society"⁸⁸ as the Gospels record Jesus as saying: "*If your hand causes you to sin, cut it off. It is better to enter life maimed than with two hands to go to hell*" (Mark 9:43)⁸⁹ However, under Islamic law, the type of theft (*sariqah*) that invokes the *haad* punishment is very restrictive in scope and is more

akin to 'burglary'⁹⁰, and unlike English law, it does not include pickpocketing, shoplifting, mugging, forgery and deception, obtaining pecuniary advantages without payment and handling stolen goods.

Even with that restrictive definition of theft, "all elements of the crime must be committed by one person"⁹¹ and all the definitional elements of theft must be there such as the following:

- 1) it is committed intentionally by a sane and mature person who is not driven by force of circumstances (e.g. poverty)
- 2) the property must lawfully belong to another and have some value, that the value of the stolen property reaches a minimum value of 3 or 10 dirhams⁹² and the property must have been taken from a sufficiently 'safe' place or proximity suitable for the safety of the object⁹³ and
- 3) the act of stealing must be attested by at least two witnesses who physically saw the crime being committed.⁹⁴

By looking at the socio-economic and legal contexts of the amputation of hand for theft, the 'deterrent' nature of the punishment for theft could be better appreciated.⁹⁵ In one sense, it could be said that the amputation of hand is the 'maximum' penalty for theft⁹⁶ because all the definitional elements of the crime has to be satisfied and even when it is carried out it is done humanely and "amputation in an actual Islamic state with an Islamic penal system is (extremely) rare"⁹⁷ in practice.

Professor Muhammad Qutb writes that "punishment for theft has been executed only six times throughout a period of 400 years is a clear evidence that such punishment was primarily meant to prevent crime".⁹⁸ As we do not have a proper Islamic state, the practices in some Muslim countries should be looked at with scepticism and put under strict legal scrutiny as "the cutting off of a hand for theft is applicable only within the context of an already existing, fully functioning 'social security' scheme"⁹⁹

'ISLAMIC LAW IS BARBARIC'?

The word barbaric was originally used by the Greeks for 'foreigners' to express the strange sound of their language. Later, this word was used to describe people who are 'uncivilised, primitive, rough, uneducated, brutal, cruel, blood-thirsty and merciless' as opposed to being 'advanced, civilised, cultured, humane and compassionate'.¹⁰⁰ It is true to say that not a single synonym of 'barbaric' is applicable to the Islamic penal system. On the contrary, humane values lie at the heart of the criminal justice system in Islam and all the antonyms of 'barbaric' are truly descriptive of the *Shari'ah*.

The object of punishment is not to relentlessly hunt down wrong-doers for retribution, but to see that peace, right and order are restored¹⁰¹ and this could be illustrated by the fact that the Islamic penal system almost wholly "lacks police, prisons and professional executioners".¹⁰² The *hudood* may appear to be harsh in the eyes of those who have been swayed by false sentiments, but human experience shows that if a punishment was to act as 'deterrent', then it has to be severe and exemplary. "Life cannot be safe if the habitual criminals are left unfinished"¹⁰³ and it is better to be severe to one and save many than to be unnecessarily lenient and thereby destroy many and put the lives of millions of others at risk.

The deterrent punishments in Islam on the surface appears to be harsh, but it is only meant for "such incorrigible offenders who stand as real obstacles in the healthy growth of human society"¹⁰⁴ and "in fact, it was a vital instrument in the dynamics of building a new social order"¹⁰⁵ and it radically abolished and amended the pre-Islamic systems where inhumanity and vengeance was the order of the day.

Prisons in Western societies are miserably failing its people and apart from being living hell, prison destabilises people and often has a "destructive effect on the personality"¹⁰⁶ Home Office statistics in Britain shows that longer sentences do not prevent reconviction and in fact 50% males and 35% females get convicted within two years after coming out of prison. Hence "if the results do not tally with the main object, it means that the laws of punishments are quite imperfect"¹⁰⁷ Thus, it is not true to say that prison is the more appropriate punishment for theft rather than the amputating of hand and if reducing the crime rate is the objective, then certainly the choice will be the Divine law - you just have to compare the crime statistics of Saudi Arabia and America and judge which one is better.

Sentences may appear to be severe in Islam, "but still more strict and severe are the 'procedures' laid down to be observed before a man may be convicted"¹⁰⁸ and the Holy Prophet said:

"Avoid the hudood as much as possible. Wherever there is even a mild chance, release him, for releasing by an error on the part of the judge is better than to punish anyone with error" (Tirmidi and Ibn Majah).

Islam also teaches that *"no bearer of a burden shall bear the burden of another"* (6:164), it guarantees the accused immunity from 'malicious prosecution' (unlike in the UK) due to strict rules of evidence¹⁰⁹, it strongly advocates the equality of all before the law¹¹⁰ and in the realm of *qisas* (equitable retribution) it teaches that *"let him not exceed in the matter of taking life for he is aided"* (17:33). Such is the humanity taught by Islam 1400 years ago!

We have dealt with the humane values that Islam stresses even at the time of sentencing. For example, in the case of flogging, several conditions and restrictions are imposed ranging from the type of stick to who inflicts the punishment to where it should hit!

In actual practice, very *"few haad punishments were prescribed"*.¹¹¹ On the other hand, if we look at the inhuman atrocities of the West it is beyond count and Professor E.F.M. Durbin, after describing the inhuman and cruel treatment that has been inflicted by the 'progressive' countries of the West concluded by saying that *"such large-scale brutality has rarely been witnessed, I am thankful to say, in the previous history of the World"*.¹¹² Therefore, "Islam is a package deal which Muslims are bound to follow and if the progressive modern cultured societies can 'tolerate' mass killing indiscriminately with atom bombs, then certainly they can tolerate the amputation of the hands, flogging or stoning to death for certain 'heinous' crimes i.e. sacrifice of a few individuals for the sake of the society as a whole".¹¹³

'ISLAMIC LAW IS OUTDATED'?

Outdated means 'old fashioned, obsolete and unfashionable' ¹¹⁴ and it is applicable to something which is 'out of date', and to raise this objection against Islamic law doesn't make sense. The *Shari'ah* is a 'living law' today, as it was 1400 years ago, among the Muslim masses across the globe, though it may not be implemented in its totality.

I think the critic is not trying to pinpoint any particular 'weaknesses' of Islamic law but is simply saying that the *Shari'ah* is too old and therefore we should forsake it for the latest modern trend.

There is nothing such as 'modernism' in Islam as Islam is forever modern, progressive and dynamic because human trends show that what is modern today becomes obsolete tomorrow. The *Shari'ah* emanates from Allah the All-Wise who, being well aware of human conditions, has revealed a law (5:48) that is "perfectly universal and applicable to all nations"¹¹⁵ for all times. "It is not a system of law to be judged and evaluated as 'good' or 'bad' in accordance with the changing views of the population or the policies of the state"¹¹⁶ and therefore the *Shari'ah* is radically different from "the ordinary law in which the legislative authority is free to explain and comment on the law introduced by it which it can freely amend, cancel or withdraw".¹¹⁷

If the aim of the law is to control unacceptable human behaviour and to reduce the rate of crime, then there has to be an element of permanence so that it may be easily recognised by the citizens who after all, are the ones who are bound to follow the law (English law teaches that 'ignorance of law is no defence'). But man-made laws change all the time according to changing "social attitudes" so much so that actions that were once regarded as 'detestable' and 'heinous' crimes (such as abortion, suicide, prostitution, homosexuality and adultery in England) are now regarded as 'legal' and normal under the same laws!¹¹⁸ Such is the nature of human laws which cannot fully comprehend human nature or predict the future and is constantly changing so much so that if I buy a law textbook today, it may not be valid for tomorrow." Islamic law, therefore, does not recognise the liberty of (human) legislation, for it would be incompatible with the ethical control of human actions and, ultimately, of society".¹¹⁹

That is why man-made laws have miserably failed and the rate of crime has reached epidemic proportion as Allah says that

"it may happen that you hate a thing which is in fact 'good' for you and it may happen that you love a thing which is in fact 'bad' for you" (2:216).¹²⁰

"Islamic law is at once static as well as dynamic"¹²¹ as a result of which it has attracted people of all nations over the last 1400 years and yet "kept the social fabric of Islam compact and

secure through the ages"¹²² and "this law shall be as responsive to the urges of a progressive society in the present and the future as it has been in the past".¹²³ So it's about time that the fallible Occidental *homo sapiens* change their 'fashionable' attitudes of contempt for Islamic law so that they may be assured of their spiritual and material well being and create an ordered crime free society based on justice.

CONCLUSION

The *Shari'ah* encompasses and governs every aspect of life and any of its specific provisions, including the penal system, must be seen in its totality where the moral, socio-economic, political and educational systems are in force and it must not be seen in isolation. If the penal system is only one of the branches of law, which is dependent on other institutions in society, then it is totally unfair to look at some of the rare punishments of Islam to judge the merit or de-merit of the whole legal system as it is done in the rubric of this essay.

The penal system is vital in enforcing social order and ensuring the stability of society. Unless 'deterrent' punishments are applied to curb the "incorrigible, hardened and habitual criminals committing most abominable atrocities"¹²⁴, then the very fabric of society will be torn.¹²⁵

Westerners never show the true role of punishments in the overall 'context' of a proper Islamic society, "rather they are shown as scattered, isolated, dissected parts, selected so as to appear absurd"¹²⁶ and they "wrongly imagine that such punishments - like the European civil systems - will be inflicted every day".¹²⁷ It must also be said that "the establishment of the true Islamic society is a 'condition' precedent to the infliction of hudood"¹²⁸ (as rights and duties are reciprocal in Islam) and that no such Islamic state exists nowadays as "the legal systems prevailing in the Islamic world are almost entirely based on Western law".¹²⁹

As humans are 'social beings' susceptible to influences and conditioning, Islam aims at eliminating the root 'cause' of crime by creating a crime free environment and blocking all avenues by which crime may be committed¹³⁰ It also wages a crusade against crime "by way of educating the masses"¹³¹ and appealing to the moral conscience and these factors are much important in reducing the crime rate than any 'material' sanctions. "The 'moral habit' engendered by the *Shari'ah* is a powerful factor making not only for individual righteousness but also for effective social co-operation and cultural progress"¹³² It is due to the absence of this in Western societies that has led researchers into the effectiveness of punishments to "the conclusion that nothing works"¹³³ because there is a saying "you can bend the necks but you can't change the hearts".

The alleged severity of the Islamic punishments is not really what the West is concerned about, but the 'moral values' of Islam as "they do not think that crimes like drunkenness and adultery deserve even a word of reproach" ¹³⁴ let alone prescribing exemplary punishments for these offences. A system which the West always attack and belittle is loved by millions of people across the globe and "this popularity (for the implementation of *hudood*) is what really horrifies the West"¹³⁵ - when it suits them, the West is even prepared to denounce their well-cherished concept of 'Democracy'.

According to Professor Qutb, the 'real' reason "Europeans are afraid of the application of the rules of Islam" is because they themselves are "criminal in nature and persist in committing crimes which lack all justification" .¹³⁶

Islam never prescribes punishment haphazardly nor does it execute these without due consideration"¹³⁷ and the few hudood punishments inflicted for the most serious offences have very strict 'definitional elements' which makes its application very rare in practice and yet it has been instrumental in the past and at present in greatly reducing the problem of crime which is seriously affecting Western societies.

Therefore, the allegations made in the rubric of this essay about the Islamic law are totally 'baseless' and reflects the West's narrow mindedness and blind vision to the reality of Islam that is sweeping across Europe and it is determined to retain its stereotype images of the Islamic law from its colonial past as an 'ideological weapon' in the crusade against Islam.

FOOTNOTES

- I "It is a common demand of all the Muslims to implement Islamic laws in their states" [Moinuddm Qadri p.140]. The 'International Seminar on the Application of *Shari'ah*' which was held in Islamabad in 1979 and attended by prominent scholars, jurists and officials from across the Muslim world unanimously resolved that "the solution to all our problems can be found in the application of Islamic *Shari'ah*" and it urged all Muslim states to enforce the Shari'ah [Hamdard Islamicus- Winter 1979 p.98]. Since then, the governments of Pakistan, Iran and Sudan introduced the *hudood*, though partially and often inadequately, in their respective countries due to popular demand and public pressure.
- 2 "This popularity is what really horrifies the West" [Haroon p.14] and "the West takes any move to re-introduce the Islamic Penal System as a crucial step in the challenge to the West" (pp.13-14).
- 3 "The religion with Allah is Islam" [Qur'an 3:19]
- 4 Haroon p.12
- 5 Thaaqib p.3
- 6 Malek p. 18. The same author also argues quite mistakenly that "any such crime must be forgiven if one admits guilt and asks for forgiveness" (p.18). See *Tafheemul Qur'an* on verse 5:39 for proper interpretation of this verse.
- 7 Mohajir p.48. The author derived his ideas, almost verbatim, from Maulvi Muhammad Ali's commentary on the Qur'an. The latter translates the Qur'anic word for thief- Sariq- as "one addicted to theft" (p.253) and he also believes that the normal punishment for theft is imprisonment (p.252).
- 8 Jullundri p.390
- 9 Thaaqib p.3. This is also the view of Hafiz M. Sarwar Quraishi (Ameer of Jama'at al Islamiyyah of Kohat, Pakistan- Est. 1936) who argues in his recently published booklet on this issue (1990) that the "hand of a thief should not be cut off from the wrist, but is only to be 'wounded' enough to leave a permanent scar" (p.38) by scraping some flesh preferably from the three middle fingers so as to act as a 'deterrent' (p.39).
- 10 View of Dr Syed Abdul Wadud and his Tulu-e-Islami in Pakistan [Thaaqib p.3]. Jullundri in his extremely awkward and self opinionated " *The true translation of the glorious holy Qur'an*" argues that the Qur'anic command "cut off their hands" means "cut off his advantages" by putting him in prison (p.385) and he also argues that only wealth, and not the hand, should be taken away in retribution.
- 11 Tafseer-e-Usmani VoU p.475

- 12 Murad p.10
- 13 Encyclopaedia Britannica Vol.22 p.31
- 14 The Oxford companion to Law p.650. Hence there is no distinction between the secular and the *sacred* in Islam and it does not recognise the Biblical maxim "Render unto Caesar the things that are Caesar's, and render unto God the things that are God's" [*Mark 12:17*].
- 15 The *Shari'ah* governs the individual as well as the *collective* life of the people that includes "religious rituals, personal character, morals, habits, family relationships, social and economic affairs, administration, rights and duties of citizens, judicial system, laws of war and peace and International Relations" [*Mawdudi: Islamic Law p.17*].
- 16 Mohammedanism (Oxford 1961) quoted in *Islamic Studies*: Autumn 1987
- 17 In a tiny island like Britain "6 million serious crimes are committed every year" [*Haroon p.71*], a crime is committed every six seconds [*Khilafah- Feb'92*], one third of men have a criminal 'conviction' for a major offence by the age of 30 [*Trends- Vol.5 Issue 2*] and in 1994 violent crimes rose by 19% [*Explicit- Sept '94*] while "the crime rates in many other countries have risen faster than the population" [*Encyclopaedia Britannica Vol.16 p.820*]. "Islam has the key to dealing with the crime wave" [*Haroon p.88*]- in Saudi Arabia in 1976 "the rate of theft and rape crimes was only 0.07% as compared to 47% in the USA" [*Wassel p.60*] and since then "crime rate in Saudi Arabia has progressively been decreasing" [*Masoodi p. 746*]. The Interior Minister of Saudi Arabia said that *deterrent* punishments for criminals, by following the *Shari'ah*, is the main reason for the apparent low rate of crimes in the kingdom [*Al-Furqan- Aug'88 p. 3*]
- 18 Amin p.53
- 19 Mumtaz Ali p.67. The Qur'an rebukes the Children of Israel by saying "would you believe in part of the book and neglect the rest" [2:85] and it tells us "*O those who believe! Enter into Islam completely and do not follow the footsteps of the satan, for he is an open enemy to you*" [2:208]. The Qur'an also strongly warns the Muslims by saying that "*those who do not rule by what Allah has revealed are transgressors... tyrants...unbelievers*" [5:44-7]. See also the following verses of the Qur'an - 4:65/33:36/4:59/8:1 and 5:50
- 20 Murad p.16
- 21 Mawdudi: Islamic Law p.18. Using the analogy from a Hadith on Islamic brotherhood, the author demonstrates that the *Shari'ah* could be compared to the *human body*- no organ can function effectively without support of the other parts and if one organ is severed, it is likely to affect the rest of the body. Similarly specific provisions of the *Shari'ah*, such as the *hudood*, should be seen as a *whole* and not in *isolation*.
- 22 Ibid. p.19
- 23 Mufti Kefayatullah: Ta'leemul Islam. See Hughes' "Dictionary of Islam" pp.285-6

- 24 Imam Ghazzali: *Al Mustasfa* Vol.2 p.66- quoted by Gilani p.365. According to 'Izz Abdus Salam al SuI ami in his 'Qawaid al Ahkam', the key principle of Islamic Law is "preventing harm to people and bringing welfare to them" (*daf' darar an al nas wa Jalb manfa'ah lahum*) [*Fazlur Rahman p.246*].
- 25 For example, Qisas protects *life* and the *hudoods* of theft and slander defends *property* and *honour* respectively [*Maydani pp.226- 7*].
- 26 Haroon p.12
- 27 Ibid.
- 28 Shah Waliullah: *Hujjatullahil Baalighah* Vol.I p.451- quoted by Gilani p.363
- 29 Mashriqi p.10
- 30 Murad p.10. Out of a total of 6683 verses in the Qur'an, "it contains no more than 500 of them concerning 'legal' matters, of which, some 80 are 'legislative' in the strict sense of the term" [*Vijapur p.33*] and surprisingly, the Qur'an only refers to five 'penal' sanctions [*Kamali p.30*]. Therefore in Islamic Law, "the list of prohibitions far more outweighs the list of punishments" [*Sherwam p.29*].
- 31 Suleman Siddiqi p.176
- 32 Iqbal Siddiqi p.29, Safuat p.162 and Awa p. 138. There are over fifty independent Muslim countries, but "no country is governed exclusively by Islamic Law" [*Walker p.65*] and "the larger issues in the areas of socio-economic and constitutional supremacy of *Shari'ah* does not seem to attract these countries" [*Tanzilur Rahman p.16*] as "the legal systems prevailing in the Islamic world are almost entirely based on Western law" [*Peters p.246*] which were adopted during the last 150 years. Hence "we do not have in the world an Islamic penal system which would be accepted as genuine. Rather we have attempts to recreate the Islamic penal system" [*Haroon p.11*]. However, Saudi Arabia appears to be the best living example of the application of hudood in the modern world, though "the 'spirit' of the *Shari'ah* has long since disappeared and the whole of *Shari'ah* too is not being enforced" [*Mawdudi: Islamic Law p.4*].
- 33 This could be illustrated by the issue of drinking which is rampant in Western societies and is the main 'cause' of all violent crimes. Seeing its detrimental effects, some US states banned alcohol in the 1930's with the might of their laws, policing and the courts and yet it drastically failed and the ban had to be lifted. But in a similar society where drinking was part and parcel of life, the Arabian Prophet (pbuh), through Divine guidance and moral education, managed to wipe out alcoholism altogether along with all its related crimes so much so that history records that the streets of Medina were flowing with wine on the day when the final prohibition of drinking was revealed [Qur'an 5:90 "*O those who believe! Surely intoxicants and gambling are the handiworks of satan- so shun it that you may be truly successful*"]. Such was the power and effect of Faith!

- 34 Punishment alone is not enough to solve social problems and guarantee stability in society. You need to educate the people and 'condition' them in the right environment as the Qur'an teaches "*We do not punish any nation unless we send unto them a Messenger (as warner)*" [17:51]. In Islamic Law, sanctions are not only material but also spiritual.- God consciousness, and the belief in accountability for Sins on the Day of Judgement greatly helps in the prevention of crime and in fact, they are more important than any 'material' considerations as most crimes are 'opportunistic' by nature [*Hamidullah p.125 n.312/ Maqsood p.137*]. The Holy Prophet (pbuh) warned the Muslims by saying: "when an adulterer?drunkard?thief etc. commits its respective offence, then he is not a 'believer' at the time of doing it " [*Sahih al Bukhari Vol.8 p.504*].
- 35 Muslehuddin p.16
- 36 Roscoe Pound: Interpretation of Legal History p.1- quoted by Tahirul Qadri p.5 & Gilani p.364
- 37 Ahmad Hasan: Sunan Abu Dawud Vol.3 p.1212 n.3793
- 38 Haroon p.29. For the sake of brevity, I have just used the word slander for false imputation of unchastity elsewhere in this essay.
- 39 Encyclopaedia of Religion and Ethics V 01.16 p.809
- 40 To translate Qisas as "retaliation" is incorrect according to Yusuf Ali and Asad because "Retaliation in English has a wider meaning, equivalent almost to 'returning evil for evil', and would more fitly apply to the blood feuds of the Days of Ignorance" [*Yusuf Ali: The Holy Qur'an 2: 178 p. 70*]. See also Asad's commentary on the same verse.
- 41 "The object of taking only 'one' life (that of the murderer) in retaliation of another life (that of the murdered) was, as indicated by the Ayah itself, to 'ward off evil' and to protect the community from continued vengeance" (like the custom of Jahiliyyah) [*Sherwani p.43*].
- 42 Mahfodz Bin Mohamed p.5
- 43 Haroon p.60. One fifth of all hospital beds are occupied by drunkards and some time ago a detailed study of London's *Wandsworth Prison* revealed that 95% of the 1600 inmates admitted that their crimes were committed as a result of too much drinking.
- 44 Shahidullah p.9
- 45 Maqsoodp.136
- 46 Haroon p.34
- 47 Martin Fogan: God's Supermarket, *The Big Issue* (19 Dec-I Jan '95: No.110)p.17

- 48 Forward to Andrew Rutherford's "*Criminal Justice and the pursuit of Decency* "
- 49 Maqsood p.138
- 50 Haroon p.74
- 51 ZafTulla Khan p.74. Amnesty International, in its attempt to belittle and curb the rising tide of Islamic awakening by using the human emotion, circulated a document in January 1995 where it stated that "*flogging constitutes a cruel, inhuman and degrading punishment*" contrary to Article 5 of the 'Universal Declaration of Human Rights' (1948). Where is Amnesty when human rights are grossly violated in Bosnia, Kashmir, Palestine, Chechniya, Philippines and numerous other places of the world or do they have a 'double standard' policy?
- 52 Sahih al Bukhari Vol.8 p.507
- 53 Maqsood p. 138
- 54 Mawdudi: Tafheemul Qur'an Vol. 4 pp.79-80
- 55 It must be said at the outset that due to the severity of this penalty and its outright condemnation by the West, some modernist Muslims have rejected the punishment of stoning (*rajm*) and followed the footsteps of the Khawarij and some of the Mu'tazilites in the past to argue that the Qur'an only prescribes 100 lashes [24:2] and not stoning for Zina. The Federal Shariat Court of Pakistan in 1981 by a majority vote even went as far as to declare that the punishment of stoning for adultery was un-Islamic [*Jahangir pp.25-6*]! However, this is only *half truth* as Zina includes both adultery and fornication. In accordance with the saying of the Holy Prophet (who is the *recipient* and 'expounder' of the Qur'an as mentioned in 16:44), the Qur'anic punishment applies to the offence of fornication and the punishment for adultery is which he himself implemented during his own lifetime as recorded in history.
- 56 The death penalty, which really horrifies the British, is still the penalty reserved for treason since the Treason Act 1351- the oldest serving statute prescribing death in England. In 1965, the death penalty for murder was abolished and the same penalty for arson was applied up to 1970. However, the death penalty is still widespread in many 'progressive' countries of the world including the West (eg. in 1986 1700 prisoners were on the 'death row' in several states of the USA) [*Encyclopedia Britannica Vol. 16 pp.812-3*].
- 57 Doi p.245. See also Iqbal p.71
- 58 Murad p.12
- 59 Mawdudi: Tafheemul Qur'an Vol.4 p.61
- 60 According to 1992 statistics prepared by the University of Blumington, a forcible rape is committed every six minutes in the USA, and in Britain 'sexual crimes' have now risen by 15% [*Explicit- Sept '94 p.8*].

- 61 Moulana Ahmed Kathrada, South Africa Da'wah Network (*Feb '95*) p.12
- 62 Mawdudi: Tafheemul Qur'an Vol.4 p.61
- 63 Suleman Siddiqi p.165
- 64 Prof M. Qutb p.133
- 65 Mawdudi: Tafheemul Qur'an Vol.4 p.79
- 66 Ibid. Vol.4 pp.67-71
- 67 Safwat p.156
- 68 Doi p.245. All the cases of adultery were proven by voluntary its
- 69 Iqbal p.71
- 70 Doi p.245
- 71 Shorter Oxford Dictionary
- 72 The hand and the foot are cut off from alternate sides [Ansari Vol. 2 p.388- derived from verse 5:33 of the Qur'an].
- 73 The right hand is cut off from the wrist in accordance with verse 5:38 of the Qur'an. Further details are provided in the Ahadith.
- 74 Trends Vol.5 Issue 2 p.10. In America, a *property crime* is committed every 3 seconds, a larceny theft every 4 seconds and a burglary every 10 seconds [1992 figures from the University of Blummington].
- 75 This does not mean that the acquisition of wealth is unrestricted. In fact, Islam only allows the acquisition of wealth through 'lawful' means [4:29], it condemns hoarding [9:34], it imposes the mandatory annual Zakat of 2.5% on one's savings and it encourages charity because "*in their wealth is a 'right' for the beggar and the deprived*" [51 :20].
- 76 Islam introduced the Welfare State 1400 years ago while it was introduced in Britain relatively recently after World War II. The system of zakat is a "compulsory payment out of annual savings of the relatively well off for the preservation, development and stability of Islamic Society" [*Zaman p.5*] and it represents the 'right' to Social Security for the poor and needy. "If *Zakat* is properly implemented, poverty is bound to disappear" (p.8) and during the time of the Umayyad *Khalifah* Umar b. Abdul Aziz, poverty was totally wiped out of the Islamic State [*M. Qutb p.132*]. But this needs sincere commitment and deep integrity on the part of our leaders.

- 77 Mawdudi: Islamic Law p.21
- 78 Asad: Message of the Qur'an p.149
- 79 Doi: *Shari'ah* p.224
- 80 Iqbal p.70
- 81 "The Son of Adam has no better right than that he would have a house wherein he may live, a piece of clothing whereby he may hide his nakedness and a piece of bread and some water" [Tirmizi].
- 82 Ibid.70
- 83 Doi p.224
- 84 Prof M. Qutb pp. 131-2. Umar is described in the Hadith as the "most stern in the execution of the orders of Allah" (ashaddufee amrillah)
- 85 Asad: Message of the Qur'an p.150, Iqbal p.70, M. Qutb pp. 131-2
- 86 Daryabadi: Tafseer al Qur'an Vol.I p.428
- 87 Ibid. p.426
- 88 Mawdudi: Tafheemul Qur'an Vol.2 pA7
- 89 "If thy hand or thy feet offend thee, cut them off, and cast them from thee" [Matthew 27:38-see also 28:8].
- 90 Haroon p.40
- 91 Peters p.251. If two persons 'jointly' steal an object, there is no amputation of hands.
- 92 According to a Hadith in Sahih al Bukhari (*Vol. 8 p. 514*), the minimum value (*nisab*) for theft is one fourth of a Dinar or three Dirhams. This is the legal opinions of Imams Malik, Shafei & Ahmad, but according to Imam Abu Hanifa, the minimum value is 10 Dirhams [*Shamsul Haqq Azimabadi: Awn alMa'bud VolA pp.235-6- quoted by Hasan in 'Sunan Abu Dawud'*].
- 93 If X sells Y's jewellery which the latter left on the table in his house, there is no hadd as the jewellery was put on the table which is not a safe place for such valuables [Peters p.251]. Similarly, "if a thief entered a house and took some property, but was caught before taking it out of the house, he cannot be punished by Hadd, but only by Ta'zeer" [Sajivat p.161].
- 94 See Peters pp.250-1, Safwat p.155, Klein p.222. The Hadd is also not applicable if "the thief returns the stolen object before an application for 'prosecution' has been made" [*Safwat p.155*].

- 95 The punishment for theft in Islam is much more practical and lenient than many other legal systems. For example, under Jewish Law the punishment for theft was death [*Exodus 22:2/ Deuteronomy 24: 7*] and thieves used to be crucified at the time of Jesus [*Matthew 27:38*]. Even in English Law, "theft of property worth more than a shilling was classified as 'felony' and, like every other felony, was punished with death, upto as late as 1861" [*Zajrulla Khan p. 75*].
- 96 Iqbal Siddiqi pp.27-8/ AH. Siddiqui: Sahih Muslim Vol.3 p.907. By 'maxium' penalty, I mean to say that all the definitional elements of the crime must be met before the full Hadd punishment of theft (i.e. cutting off the hand) is given. Hence I do not endorse the un-Islamic standpoint of some *Modernists* who believe that cutting off the hand should be the last resort for theft and ordinarily the punishment should be imprisonment [*see footnote 7*].
- 97 Haroon p.41
- 98 Islam: The Misunderstood Religion p.134
- 99 Asad: Message of the Qur'an p.150
- 100 Doubleday Roget's Thesaurus p.52
- 101 Maqsood p.139
- 102 Haroon p.76
- 103 Sherwani p.45
- 104 Sherwani: preface
- 105 Sherwani p.67. One should look at the effects and not just the punishment per se and due consideration should be given to the feelings of the victim.
- 106 Thomas Mathiesen: Prison on Trial, London 1992
- 107 Tafseer-e-Usmani Vol.I p.474
- 108 Murad p.16
- 109 Haroon p.22. The Qur'an says "*Let not the enmity of any people prevent you from doing justice to them*" [5:8].

In England, the overwhelming majority of criminal prosecutions are initiated by the Police in the name of the Crown and they "assemble the evidence, control the content, select, authenticate and validate it" [*McConville & Baldwin: Courts, Prosecution and Conviction, 1981, pp. 89-90*]. Due to the adversarial nature of the English Criminal Justice System, the Police often abuse and exploit their power and discretion in circumventing evidence in order to obtain results favourable

to their cause. The Royal Commission on the Police (1962) found that "police officers occasionally colour, exaggerate, or even fabricate the evidence against an accused person" and recent examples of such 'Miscarriages of Justice' include the case of the Guildhall Four '89 and the Birmingham Six '91.

- 110 Aisha reports that a prominent woman named *Fatima b. Qais* from the Makhzumite tribe was caught red handed for theft and members of her family sought intercession of the Holy Prophet (pbuh) through one of the prophet's companions whereupon he said: "The people before you were destroyed because they used to inflict the legal punishments on the poor and forgive the rich. By Him in whose Hand is my soul Even if Fatima the daughter of Muhammad were to commit theft, I would certainly cut off her hand" [*Bukhari Vol.8 pp.512-3/ Muslim Vol.3 p.910/ Abu Dawud Vol.3 p.1218*]. This 'equality of all before the law' could be demonstrated by several incidents from the *Rightly Guided Khulafah* such as the case of *Abu Shahma*, the son of Khalifah *Umar*, who died as a result of flogging after he was convicted of fornication or drinking even though the public had pity for him and demanded that he be let off the hook but the *Khalifah* rigidly applied the Qur'anic maxim "*and let not the pity for them prevent you from executing the order of Allah if you truly believe in Allah and the Last Day and let a party of believers witness the event*" 24:2 [*Shah Wabullah: Izalatul Khifa p.151- quoted by Sarwar p.16. See also Sherwam p.67*].
- 111 Peters p.252
- 112 The Politics of Democratic Socialism (1948) p.25- Quoted by Khurshid Ahmad in Mawdudi's translation of 'Islamic Law' p.35
- 113 Wassel p.60
- 114 Doubleday Roget's Thesaurus p.475
- 115 Mashriqi p.2. "He who has created the Universe and Man, and He made Man obedient to the laws which also governs the Universe, has also prescribed a *Shari'ah* for his voluntary actions. If Man follows the Law, then his life is in harmony with his own nature" [*Sayyid Qutb: Milestones p.J64*].
- 116 Amin p.53
- 117 Iqbal p.75
- 118 Islahi p.24- see also Encyclopaedia Britannica Vol. 16 p.796
- 119 Muslehuddin p.3.

"For the many peoples who constitute the world of Islam, the Divinely ordained *Shari'ah* represents the standard of uniformity as against the *variety* of legal systems which would be the inevitable result if law were the product of *human reason* based upon the local circumstances and the particular needs of a given community" [*Coulson: A history of Islamic Law p.5*].

- 120 "The Western Penal System is no *deterrent* for crime, nor can any 'worldly' government minimise or even just contain the spiralling crime rate" [*The Majlis Vol.II No.9- Mar '95 p.4*]. The inherent deficiency of the English Law, for example, could be seen by the fact that the Criminal Justice System gives protection to the culprit and jeopardises the life of the victim and puts the lives of millions others at risk by I) imposing lenient sentence on the culprit where there is great likelihood that he will soon re-offend and ii) the victim is made to support and maintain the culprit in prison by paying tax money.
- 121 Ibid. p.25
- 122 Muslehuddin p.3
- 123 Mawdudi: Islamic Law p.33
- 124 Sherwani p.63
- 125 "Punishments are necessary to I) uphold law and order and ii) should inculcate respect for law in society and, above all iii) they should *deter* political delinquents from undertaking criminal activities" [Masoodi p. 747].
- 126 Haroon p. 10
- 127 M. Qutb p. 133
- 128 Safwat.162
- 129 Peters p.246
- 130 "Islam tries in the first place to 'purify' society *from* circumstances that may lead to crime. After taking such precaution Islam prescribes a *preventative* and *Just* punishment which may be inflicted upon persons who have no reasonable justification *for* their crimes" [*M. Qutb p.132*].
- 131 Masoodi p.743
- 132 Asad: This Law of Ours p.36
- 133 Encyclopaedia Britannica Vol16 p.821 134 Mawdudi: Islamic Law p.35
- 135 Haroon p.14
- 136 Islam: The Misunderstood Religion p.134
- 137 Ibid. p.131

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